(13)

88-765

Supreme Court, U.S.
FILED
OCT 12 1988
JOSEPH F. SPANIOL, JR.
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1988

THANH VONG HOAI,
Petitioner,

v.

THANH VAN VO, THACH DUY NGUYEN, MY-LINH D. SOLAND, NGUYEN THI BACH LUU, THANH VAN VO, SUNTECH SUNOCO, INC., and MICHAEL ARIF,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

APPENDIX III (Supplemental) PART E

Laurence A. Elgin *
John D. HEMENWAY
4816 Rodman St., N.W.
Washington, D.C. 20016

*Counsel of Record

17

CONTENTS OF THIS VOLUME OF APPENDIX III

(Supplemental) APPENDIX III

PART E

THE ORIGINAL COMPLAINT WITH WHICH THE AFFIDAVIT WAS INCORPORATED in the United States District Court for the Eastern District of Virginia, Alexandria Division.

HOAI v. VO, et al., CA 87-0294

(This is the 3rd part of 4 parts) pp 266-334

intellectual property of ownership of his business name and trade name for the gas station, SUNTECH SUNOCO, INC., through the formation of that corporation for unlawful purposes by these acts of fraud and extortion alleged above and other such acts and further fraud.

(e) Further Foundation of Damages

172) It is almost as a matter of course that a dealer and person experienced in the gas station business such as this plaintiff was before this pattern of racketeering activity was practiced upon him, will obtain a franchise such as this one after the one year trial period. This is the purpose and effect of the thorough screening of applicants for such lease and franchise businesses which is done by large oil companies which was done by Sunoco in this instance. The history of such lease and franchise arrangements and statistical evidence shows that in most

cases such "trial" arrangements result in ongoing dealer relationships that last upwards of twenty years.

173) In this case Sunoco worked with the plaintiff in the gas station business for years and knew him and his capabilities well. Indeed, Sunoco had informed plaintiff that in his case the one year trial period was only a formality and that there was no question but what he would become a permanent lessee and franchisee, or dealer. To this end plaintiff and Sunoco had negotiated and agreed upon target figures which were included in the contract between them with target dates that both parties knew could be achieved by plaintiff at the site in question.

174) The gas station on Pennsylvania Avenue, S.E., in the District of Columbia is a large station and a high-volume site because of its strategic location on a major traffic artery leading in and out of

the city in a neighborhood that "bottomed out" in terms of real estate values declining in the late 1970's and is now steadily increasing in terms of real estate values.

175) In 1980, when the neighborhood of the station had just "bottomed out" in terms of real estate values, plaintiff negotiated to acquire this station from the Sunoco dealer who then had it (Now a dealer nearby for another company.) for a price of one hundred and thirty-nine thousand dollars ($139,000.). At that time plaintiff was discouraged by Sunoco from completing the purchase of the business though Sunoco had no quarrel with that price but rather solely on the grounds that the plaintiff need not pay that money to buy from the prior dealer because that dealer was not an efficient dealer for Sunoco and, despite the fact that the then dealer in this station had

been with Sunoco many years they were hoping that the man would take the exceptional step of leaving the dealership and then the plaintiff could acquire the station by direct dealing with Sunoco at that time. Sunoco had offered plaintiff to be the dealer at other sites and locations in addition to the time that he was a Sunoco dealer in Greenbelt, Maryland, until he was defrauded and extorted of that business as alleged in the affidavit.

176) Under the prior dealership at the Pennsylvania Avenue Sunoco station, the monthly gallonage was on the average between eighty (80) and eighty-five (85) thousand gallons per month. When the plaintiff entered into the dealership that was defrauded and extorted from him by the pattern of racketeering activity described herein, the station had been closed since sometime in early January of 1986 or

thereabouts, or about three months.

177) The plaintiff and Sunoco, based on the historical gallonage of this station, and the known quantity between them of plaintiff's experience and abilities, agreed that plaintiff could in three to six months boost the gallonage of the station to over one hundred thousand (100,000.) gallons per month.

178) Immediately upon opening the plaintiff, even with defendants VO and THACH and ARIF interfering with the financhial arrangements and hiring practices of the station, was able to immediately sell at a rate of forty-five to fifty thousand gallons (45,000. to 50,000.) gallons per month.

179) In a few short weeks before the threats on his life and to his person and his family and the other activities deprived him of any semblance of management control of the station, the

plaintiff was able to get the station gallonage up to over sixty thousand (60,000.) gallons per month, showing that the calculations between the plaintiff and Sunoco in this regard were correct. Plaintiff and Sunoco were so certain of the correctness of this figure that they included in their negotiations and agreement an incentive plan under which, when the one hundred thousand gallons (100,000.) per month figure was reached, the plaintiff would receive a one thousand dollar ($1,000.) per month reduction in the figure which he was to otherwise pay monthly to Sunoco under the terms of the franchise and lease, which was set at four thousand and five hundred dollars ($4,500.) per month.

180) As a general rule in the gas station business the gross income from the items other than the sale of gasoline itself runs about sixty percent (60%) of

the gross income generated from gasoline sales. This other income includes the income from mechanical repair work (There are three mechanic's "bays" in the 2305 Pennsylvania Avenue, S.E., station.) and from the sales of oil and other fluids, tires, batteries and accessories (TBA) and other incidentals, (Cigarettes, candies, etc., which in this case were fraudulently and extortionately robbed by the defendants VO and THACH.) The defendants herein directly interfered with the plaintiff's hiring of mechanics and establishment of incidental sales. Nonetheless it is possible to estimate within applicable authority, from industry figures and practices and the past experience of plaintiff and Sunoco that the figure of sixty percent (60%) is accurate for this large station.

181) Sunoco has a company program under which it establishes at appropriate sites,

with its franchisees and dealers, a "C MARKET. Such a C MARKET is a convenience food store or "mini-market," placed in a station by agreement between Sunoco and the franchisee at that location. Sunoco has discovered, and industry experience proves, that when such a mini-market or C MARKET is installed at a location such as the one at issue, fuel sales increase between thirty-five and forty percent (35 and 40 %).

182) So in this instance, when the one hundred thousand (100,000.) gallon per month figure was reached as agreed between plaintiff and SUNOCO that the location and plaintiff's capabilities would enable, that figure would be increased further to one hundred and forty thousand gallons (140,000.) per month.

183) So confident were plaintiff and Sunoco of these figures that the Sunoco area manager, Ernie Peele, informed

plaintiff that he had already planned and initiated the paperwork for the installation of such a C MARKET in three to six months as soon as the one hundred thousand (100,000) gallon per month figure was reached and, further, as was standard, SUNOCO would pay for the building and installation and conformity to code and other regulations of the C MARKET building and that plaintiff would not have to pay any additional rent; plaintiff would still get the discount of one thousand dollars ($1,000.) per month and so for the franchise, lease, and C MARKET, plaintiff would pay a combined monthly payment of three thousand, five hundred dollars ($3,500.) per month. Plaintiff would have to stock the store with inventory under the agreement, which is standard.

184) Based on industry figures and the gallonage and traffic volume figures for the site and the market characteristics of

the neighborhood, the minimum gross sales of such a mini-market in this location would be in a range of from twelve hundred to fifteen hundred dollars ($1,200. to $1,500.) per day at the outset of such a business, with a minimum increase over a period of a year of another five hundred dollars ($500.) per day.

185) Plaintiff and his wife, as their experience in the Mekong Center food store business, in increasing its daily gross sales, from one hundred dollars ($100.) to eight or nine hundred dollars ($800. or $900.) shows, were well equipped by experience and capability to run such a C MARKET.

186) With the C MARKET and the capabilities and experience of plaintiff or any other similarly experienced and equally skilled operator, given the high traffic volume and the growth and development of the surrounding areas and

the areas linked by Pennsyvania Avenue, the station, absent the illegal activities of the defendants, could be reasonably expected, and the same can be calculated within relevant authority, to reach a gallonage figure within two years of one hundred and fifty to one hundred and eighty thousand gallons per month.

187) Altogether, but for the damages to the plaintiff, his business and business reputation, proximately caused by this pattern of racketeering activity engaged in by defendants VO, THACH, MINH, LUU, ARIF, SOLAND, and SUNTECH SUNOCO, INC., plaintiff's gas station business, lease and franchise, would have generated gross sales, including C MARKET sales starting after six months, of, in the first full year of operation, in excess of one million and four hundred and fifty-seven thousand dollars ($1,457,000.), in the second full year of operation, such sales

in excess of two million and eight hundred and nine thousand dollars ($2,809,000.) and in the third year and each year thereafter, in excess of two million and nine hundred and thirty-five thousand dollars ($2,935,000.) without regard to interest due plaintiff on any reward herein or any increment of growth or price increase after a two year startup period.

188) Over an average twenty-five years life of a dealership, this particular lease, franchise and dealership would have generated, absent the tortious activity of these defendants, in excess of eighty million dollars ($80,000,000.).

189) It can be shown that the gross profit of such a business, calculable and awardable in this instance under relevant authority as applied to the facts, would be according to the following formulae: gross profit on gasoline sales equals twenty-four percent (24%) of gross sales;

gross profits on oils, other fluids, TBA and mechanical work gross profit equals forty percent (40%) of gross sales; gross profit on C MARKET STORE sales equals thirty-five percent (35%). Plaintiff will so show.

190) That these resulting profits were not made on the volume of sales anticipated at the location was a natural and proximate result of the activities of defendants complained of.

WHEREFORE, on this count III plaintiff prays for damages as follows:

I. For the pattern of racketeering activity culminating in the fraud and extortion of the gas station and proximately caused by the defendants VO, THACH, MINH, LUU, ARIF, SOLAND, and SUNTECH SUNOCO, INC., and against each and every one of them, jointly and severally, for direct damages, for directly investing the gas station's own proceeds, as

appropriated by wire fraud, robbery, extortion, or interference with commerce in violation of 18 U.S.C. 1961(a) to acquire, establish or operate the said business consisting of the station lease and franchise, or for acquiring or maintaining, directly or indirectly, interest in or control of the station lease and franchise affecting interstate or foreign commerce in violation of 18 U.S.C. 1962(b), or for conducting or participating in, directly or indirectly, the conduct of the affairs of the fledgling organized crime entity described herein, through a pattern of racketeering activity to the harm and detriment of plaintiff in violation of 18 U.S.C. 1962(c), and/or for conspiring to do any of these things in violation of 18 U.S.C. 1961(d), in excess of twenty-five million dollars ($25,000.000.), and, in addition thereto,

II. For the pattern of racketeering activity under these same statutory sections culminating in the fraud and extortion of the gas station and proximately caused by the defendants VO, THACH, MINH, LUU, ARIF, SOLAND, and SUNTECH SUNOCO, INC., and against each and every one of them, jointly and severally, for damages to plaintiff's business, good will and business reputation, in the nature of slander as well, in excess of twenty-five million dollars ($25,000,000.) in addition to the direct damages specified above, and

III. For the pattern of racketeering activity culminating in the fraud and extortion of the gas station in violation of the said statutory sections and proximately caused by the defendants VO, THACH, MINH, LUU, ARIF, SOLAND and SUNTECH SUNOCO, INC., and against each and every one of them, jointly and severally, and in

addition to the two types of damages specified in prayers I. and II. above, damages for pain, suffering and emotional and mental distress proximately caused by these defendants in an amount in excess of ten million dollars ($10,000,000.), and

IV. for attorney's fees occasioned and proximately caused by the pattern of racketeering activity engaged in by these defendants in defending against fraudulent activities and sham pleadings engaged in by these defendants as part of that scheme and pattern, against each of these defendants jointly and severally, in excess of one hundred thousand dollars ($100,000.) as estimated to complete the defense and removal and nullification of those fraudulent and sham pleadings.

V. total damages under this Count III, before trebling under the statutory provisions of 28 U.S.C. 1964 (c), in excess of sixty million and one hundred

thousand dollars ($60,100,000.) and

VI. For the above damages trebled under the said provision of 28 U.S.C. 1964 (c) a total in excess of one hundred and eighty million and three hundred thousand dollars ($180,300,000.) plus,

VII. The costs of attorneys' fees under the above statutory provision estimated to be in excess of three hundred thousand dollars ($300,000.) in order to successfully prosecute this case against this complicated pattern of racketeering activity and the other costs and fees of this suit, all in all

VIII. a total in excess of one hundred and eighty million and six hundred thousand dollars (($180,600,000.) plus the following equitable and declaratory relief:

IX. Preliminary and permanent injunctions ordering these defendants VO, THACH, MINH, LUU, ARIF, SOLAND, and

SUNTECH SUNOCO, INC., and the COWBOYS or any of them to refrain from directly or indirectly threatening or attempting to intimidate in any way with threats of violence or bodily harm this plaintiff or any member of his family, his friends, associates, attorneys, and any witnesses named herein or individuals who were involved in these events set out in these allegations upon penalty of being immediately held in contempt of court for so doing.

X. Preliminary and permanent injunctions ordering these defendants VO, THACH, MINH, LUU, ARIF, SOLAND and SUNTECH SUNOCO, INC., and the COWBOYS or any of them or anyone directed by them or their agents to refrain from directly or indirectly disparaging, misrepresenting, slandering, repeating or originating false allegations with regard to the plaintiff, his business ability, the so-called "contract" obtained

extortionately and unconscionably to take the gas station from him for one dollar, or saying that plaintiff is or was a liar or lied with relation to any of the events described herein or that his business abilities are not good or in any other way attacking his business or business reputation upon penalty of being found in contempt by the court.

XI. Preliminary and permanent injunctions ordering the defendants VO, THACH, MINH, LUU, ARIF, SOLAND and SUNTECH SUNOCO, INC., and the COWBOYS or any of them to refrain from directly or indirectly representing to anyone that the defendant THACH is a banker or owns or is an officer of any bank or ever has been, or that the defendants THACH or VO own or ever have owned or been officers of any construction company or that the defendant THACH is or ever has been an attorney, or that the plaintiff or any of his attorneys

have ever been put in jail or that the defendants VO and THACH did not threaten the plaintiff and his family with death and bodily harm in order to extort his business interests from him.

XII. An immediate declaratory judgment declaring the "one dollar contract" claimed by VO and THACH invalid as a matter of Virginia contract law and a preliminary injunction ordering the defendant VO to stay away from the gas station in question at 2305 Pennsylvania Avenue, S.E., pending the outcome of this case and to not approach within one mile of that location and to not telephone the station and to not talk to, write to or otherwise communicate directly or indirectly with anyone employed in or in connection with that station and to not communicate directly or indirectly with anyone who does business with the station as a supplier, wholesaler, insurance

provider or any other capacity and to cease paying any money to or promising to pay any money or thing of value to anyone directly or indirectly in connection with the station except as necessary to the preparation of the defense of this lawsuit, and the same for the defendants THACH and ARIF and permanent injunctions to the same effect thereafter.

XIII. Preliminary and permanent injunctive relief ordering the various government regulatory bodies involved, such as the D.C. Department of Licensing and Inspections and Recorder of Deeds office from recognizing in any way the defendants THACH and VO as being in any way owners, partners, officers, managers or other principals of the gas station in question or any entity affiliated with it such as the defendant SUNTECH SUNOCO, INC., and ordering them to vacate and treat as void all certificates, licenses,

permits or other official documents obtained by these defendants or any of them as a result of the fraud and extortion and pattern of racketeering activity complained of herein.

XIV. Preliminary and permanent injunctive relief ordering the seizure for the benefit of the plaintiff of any and all businesses and assets purchased or otherwise paid for (as by rental payments or deposit) in whole or in part out of the proceeds or benefits of the pattern of racketeering activity complained of herein.

XV. Preliminary injunctive relief immediately freezing all assets including inventory and bank accounts of the defendants or any of them in connection with the business of the gas station in question and the defendant SUNTECH SUNOCO, INC., particularly freezing any account in the McLean Bank of McLean, Virginia, and

ordering the production of all records of that bank with regard to VO and THACH and SUNTECH SUNOCO, INC. (or SUNTECH CORP. or any variation thereof) and ordering immediate inventory of the gas station assets and production of all its records and accounts.

XVI. Such other and further equitable and legal relief as to the Court shall seem just and proper.

COUNT IV: RICO: WIRE FRAUD, ROBBERY AND EXTORTION OF THE BUSINESS AND BUSINESS INTEREST OF THE PLAINTIFF AND HIS WIFE IN THE MEKONG CENTER FOOD STORE: INTERFERENCE WITH COMMERCE

191) The plaintiff repeats and incorporates herein by reference the allegations of paragraphs 1) through 190) above.

192) A fraud, robbery and extortion was perpetrated upon plaintiff on the evening of May 2, 1986, by defendants MINH, LUU, VO and THACH at the condominium home of MINH and LUU, in which the plaintiff was tricked and compelled to turn the alleged "loan" to him of a certified check made out to plaintiff in the amount of fifteen thousand dollars ($15,000.) over to defendants MINH and LUU by the then omnipresent and continuing threats of VO and THACH and the defendants holding this course out to him, under duress and threats of violence as to other avenues, as the only economic alternative for him

to pursue.

193) Plaintiff had been deceived, defrauded and extorted into signing a thirty thousand dollar note, and the only thing he had in exchange that he could hope to do anything with was the claim that he had paid fifteen thousand dollars ($15,000.) of the agreed upon twenty thousand dollar ($20,000.) purchase price of the Mekong Center food store business to defendants MINH and LUU as part of the transaction by which he had been so defrauded and extorted as part of an extortionate credit transaction.

194) This supposed loan of the fifteen thousand dollar certified check to be paid to defendants MINH and LUU was in itself an act of extortionate credit and extortionate collection of debt in that VO, THACH, MINH and LUU never intended to actually lend the plaintiff thirty thousand dollars ($30,000.) or even

fifteen thousand dollars ($15,000.) as represented, but only to establish a claim against him for the larger amount without ever actually letting him have any real benefit or use of even the smaller amount of money. This was later made evident to the plaintiff and his wife by further acts of fraud, deceit and extortion by these defendants.

195) Nonetheless, though the defendant and his wife knew that they had been badly deceived, defrauded and extorted, the plaintiff determined to see if he could at least get the long promised lease for the Mekong Center food store business signed now that he had, as he thought, given the defendants MINH and LUU fifteen thousand dollars ($15,000.) toward the twenty thousand dollar ($20,000.) purchase price which he and his wife and the defendants MINH and LUU had agreed upon. This was the only economic alternative left open to

him by the fraud, robbery and extortion of the defendants which did not appear to expose his family and himself to the threat of violent harm and death.

196) At the time plaintiff had access to, through his wife's family, another five thousand dollars ($5,000.) to complete the agreed upon purchase price of the food store business, now that the promised loan from "banker" THACH had turned out to be a fraud. But plaintiff was determined not to pay the last five thousand of the purchase price unless he could get the long promised lease signed.

197) At the May 2 meeting where the plaintiff was defrauded and extorted, defendants MINH and LUU told plaintiff that they were too upset to sign the lease that evening and said they would sign the lease tomorrow. This was the first of another series of fraudulent excuses, most of which were perpetrated on the phone,

from that meeting until May 27th. These frauds including pretending to lose the lease, objecting to it being in English instead of Vietnamese, then objecting to a version in both the Vietnamese and English languages side-by-side. Throughout this time these defendants continued to assure plaintiff that they intended to sign the lease as they had agreed but they continued to offer fraudulent excuses. Plaintiff relied upon their fraudulent representations that they intended to sign a lease but just couldn't at the time because of the various excuses, and he did so to his own detriment.

198) During the time from the 15th or 16th until the 27th, plaintiff informed the other owners of the shops or stalls in the Mekong Center that they had better help him get the defendants MINH and LUU sign the lease because plaintiff and his wife were desperate to get MINH and LUU to

fulfill their promises and sign the lease. Plaintiff and his wife informed the other shopowners of the essential terms of their agreement with MINH and LUU such as the twenty-thousand dollar purchase price and the lease and its term co-terminous with the master lease. MINH and LUU and the plaintiff and his wife had discussed these things in front of the other shopowners. When he prepared it plaintiff again told the other shopowners about these terms and showed them all the dual language version of the lease.

200) The plaintiff and his wife, as part of their agreement with the defendants MINH and LUU on which plaintiff and his wife, acting in reliance and good faith, had partially performed, had the only key to the overall building so that they had to be there to unlock the main door of the center before any other shopowners could get in the building to get to their stores

in the center. Now, in desperation, the plaintiff and his wife told the other shopowners that if the defendants MINH and LUU did not sign the promised lease in about a week they could see no other way to force that signing other than locking the main door and shutting down the entire center until the defendants MINH and LUU signed the lease for plaintiff and his wife as promised. Though they stood to lose money themselves the other store owners agreed that this was the only thing that plaintiff and his wife could do under the circumstances.

201) The other shopowners of the Mekong Center agreed to communicate and did communicate to the defendants MINH and LUU during this period that things had come to this desperate situation and urged MINH and LUU, or so plaintiff and his wife have it on information and belief from what the other shopowners told them, that they

ought to sign the lease that they had for so long promised to the plaintiff and his wife.

202) The plaintiff's wife was telephoned at the Mekong Center food store on the morning of May 27th by the defendants MINH and LUU who told her that they had decided to sign the lease that evening. Overjoyed, she called plaintiff to the phone. LUU told plaintiff that she and MINH wanted the plaintiff to come to their condominium that evening after closing the store in order that LUU and MINH could sign the lease for the plaintiff and his wife. The plaintiff readily agreed and hung up, thanking the two defendants and assuring LUU that he and his wife would be there.

203) Overjoyed, the plaintiff went around and told the other shopowners that defendants MINH and LUU had agreed to sign the lease that evening. "We have our

lease," he told them, "It will be signed tonight. Tomorrow we'll have a party," he told them. All the other shopholders congratulated them.

204) This telephone call was an act of wire fraud, designed to falsely promise the lease signing, which defendants MINH and LUU had no intention of carrying out, in order that the defendants MINH and LUU might set up the final extortion of the ownership of the plaintiff in his wife in the food store business which they had established by their partial performance in reliance on the promises of the defendants MINH and LUU and their payment of the bulk of the purchase price in the manner aforesaid and to rob the plaintiff and his wife also of the inventory which they had purchased for the business.

205) Plaintiff and his wife, anticipating a possible breach of the agreement with MINH and LUU by MINH and

LUU had, wisely, as it turned out, insisted on the signing of a binding lease before, initially, paying any of the purchase price, and, then, pursuant to the wire fraud and deception of defendants MINH, LUU, VO, THACH and ARIF as set out above, had insisted on it before paying the final five thousand dollars of the purchase price even when defrauded and extorted into paying the fifteen thousand dollar certified check that plaintiff had been "loaned" for the thirty thousand dollar note that had been obtained by fraud and extortion.

206) The misrepresentation designed to "set them up" for the final fraud and extortion was part of an interference with commerce by the defendants.

207) That evening defendants MINH and LUU further defrauded plaintiff and his wife by claiming that they could not sign the lease as proposed, promised and agreed

upon for so long because the master lease which they had with the owners of the Mekong Center building did not allow them to sublease and the landlord did not allow it.

208) Defendant MINH stated for the first time that the other shopkeepers did not have leases but only papers in the Vietnamese language and he said they would give the plaintiff and his wife a "management contract" paper in the Vietnamese language.

209) The plaintiff said that he had never done business in this country that way, that he and his wife had been promised a lease, that on that promise they had invested their money and built up the business and that they wanted the lease as promised.

210) MINH insisted that the only thing that he and LUU could give the plaintiff and his wife would be Vietnamese language

paper in the form of a "management contract." MINH then told the plaintiff and his wife terms of this "management contract" which were entirely different from all that the plaintiffs and these defendants had discussed previously.

211) The defendant MINH at this time proposed a whole new set of payments and conditions never before mentioned by these defendants in all of their many conversations with the plaintiff and his wife, as if the whole fraud and extortion with the fifteen thousand dollar ($15,000.) certified check and the fraudulent thirty thousand dollar ($30,000) note had never happened.

212) Defendant MINH told plaintiff and his wife that the cost of the "management contract" would be a total of thirty-two thousand dollars ($32,000.) broken down as follows:

A. A new payment of twenty thousand

dollars for the cost of the "management contract" as if these defendants had never received the fifteen thousand dollars ($15,000.) on May 2.

B. A payment of four thousand dollars "security deposit."

C. An additional payment of one month's "rent" on the "management contract" of four thousand dollars ($4,000.) where these defendants and the plaintiff and his wife had been talking of, and paying, a rent of two thousand dollars ($2,000.).

D. Still another payment of four thousand dollars ($4,000.) for the beat up old van of the food store. This old van, a 1976 Chevy Van, very beat up by accidents, was not worth more than five or six hundred dollars ($500. or $600.)

213) MINH told plaintiff and his wife that they would have this contract for one year and, if defendants were satisfied, they could have a "management contract"

for another year.

214) MINH said that if plaintiff and his wife did anything during the first year to displease MINH and LUU, they would kick them out of the Mekong Center and the only thing returned would be the four thousand dollars ($4,000.) "security deposit."

215) Plaintiff told the defendants that they did not want the "management contract" being offered by these two defendants, what the plaintiff and his wife wanted, the plaintiff said, was the deal that had been agreed upon all along, with a lease in the American language for the term of the master lease. We do not do business that way, the plaintiff told him, we want the lease in the American language because we want to be legal in this country and we want the two thousand dollar per month rent agreed upon.

216) MINH said that he and LUU could not do as the plaintiff and his wife wanted.

217) The plaintiff said, okay, that he and his wife would sell the business back to the defendants MINH and LUU and that they wanted back the fifteen thousand dollars that he had given to the defendants MINH and LUU on May 2.

218) Plaintiff suggested that they all meet the following morning at 8 AM and inventory the stock in inventory in the store and then the defendants MINH and LUU could pay the plaintiff and his wife the cost of the goods at wholesale which, plaintiff informed the defendants MINH and LUU, was between forty-nine thousand and fifty-two thousand dollars ($49,000. and $52,000.).

219) Defendant MINH said that he and the defendant LUU could take it over. We don't have that kind of money now, he said, but we can get it for you later. The plaintiff replied that that was fine and asked the defendant MINH to give him a

postdated check dated for whenever they had the money. MINH said it would be about a week but the defendant LUU then interrupted and said they needed the money for something else and it would be about thirty to forty-five days before the check would be good and the plaintiff said that would be fine.

220) The defendants MINH and LUU then said that they would settle everything and give the plaintiff such a check when the parties conducted the inventory the following day. The parties shook hands and the plaintiff and his wife left saying that they intended to stop by the food store on the way home and get the papers that they would need the next day in doing the inventory and that they would go over them in order to be able to do the inventory quickly. These papers were the record book that the plaintiff and his wife kept on their purchases and the

credit owed and receipts for the rents paid to these two defendants, invoices and all the other papers that the plaintiff and his wife had used in conducting the business.

221) Now, in fact, all of this was once again a fraud and a deceit. These two defendants had never had any intention of keeping their agreement and this act of fraud was a misrepresentation as to what the agreement had been, a flagrant falsification of the terms of the bargain between the parties which actual agreement the plaintiff and his wife had long since partially performed on.

222) These newly fabricated false terms were known by these defendants to be false and the entire act of inducing plaintiff and his wife to come to the condominium under the false pretext that the defendants were finally going to sign the lease that was proposed in draft by the

plaintiff to these defendants some time before and the terms of which had been agreed upon and discussed for months, this entire act was itself a fraud and a pretext, solely designed to make sure that the plaintiff and his wife were occupied away from the Mekong Center food store while the agent of these two defendants, Mr. Sat, set up things to complete the fraud and extortion of the food center business by locking the plaintiff and his wife out of their business. These defendants knew that the fraudulent terms that they were now proposing as if they had been the terms proposed before when in fact they were a radical change would be unacceptable to plaintiff and his wife.

223) This evening of May 27, 1986, after the plaintiff and his wife left the condominium of the defendants MINH and LUU, they proceeded to the Mekong Center only to find that the man Sat was there

waiting for them and the man Sat had changed the lock on the door to the Mekong Center so that the plaintiff and his wife could no longer enter.

224) Sat told plaintiff and his wife that on orders from MINH and LUU he had changed the lock and could not let them enter. The plaintiff told the man Sat that he was going to call the police. The man Sat told plaintiff that defendants MINH and LUU had already called the police and that if the plaintiff and his wife tried to enter the Mekong Center and tried to get to their food store business they, the plaintiff and his wife, would be locked up. The plaintiff believed this because of the times that the defendants THACH and VO had bragged to them that they had the police, in Arlington and D.C., on their side. During the gas station extortion, in May, when the defendants VO and THACH had the cowboys hanging around

the gas station during plaintiff's visits there, the defendant VO on one occasion also had with him a large, black American whom plaintiff had never seen before. This man was tough looking. Pointedly, in front of the plaintiff, the defendant VO had asked this man at the time: "You're off duty, aren't you ?" When this man replied that he was, VO said: "Good, good."

225) Plaintiff and his wife had to go home without the business papers of the food store. This was only a few days after the plaintiff had been again threatened with death and bodily harm for himself and his family at the gas station in connection with the fraud and extortion practised upon him in order to take over that business and he and his wife, when they got home, were very apprehensive. To both of them, this was beginning to look like a similar setup. They believed,

based on the past threats and encounters that in the morning at the Mekong Center there would be a combination of threats of force and the manipulation of the police by the defendants MINH and LUU and that THACH and possibly VO would be in it along with some of the cowboys. The plaintiff and his wife discussed the possible ways that the defendants would try and trick and intimidate them. They thought one of the defendants, for example, might try and fall over and pretend that the plaintiff had struck him and use that as a pretext.

226) Because of these fears and apprehensions engendered by the past behavior of the defendants THACH and VO, whom they now knew to be in league with the defendants MINH and LUU, the plaintiffs decided that the plaintiff's wife should not go to the food store the next morning and that the plaintiff should go early and hide in the store of their

friendly rival in the food store business, Mr. Tung, who owned the Saigon Market next door and from there the plaintiff could see what was going on next door without being seen.

227) The plaintiff got up early and went to the Saigon Market about 7:30 AM and positioned himself where he could see what was going on at the Mekong Center next door without being easily observable himself.

228) About ten or fifteen minutes before 8 AM, the plaintiff saw a red Chevrolet Camaro, with Texas license plates, the number of which he could not read, drive up in the alley behind the Mekong Center. It drove to the rear door and the driver parked it behind the rear door. Four youngish men, between 19 and 30 by their appearance, very strong looking, got out of the Camaro and went in four different places around the Mekong Center building.

Only one was in the rear where the plaintiff could still see him. He looked in the windows of the Mekong Center. He took up a position in the alley. The other three disappeared around corners of the Mekong Center building so that plaintiff could no longer see them.

229) The one young man remained where the plaintiff could see him, waiting. He was still waiting around quarter after eight or so when the car of MINH and LUU, the Mercedes from the American Service Center, pulled up behind the Mekong Center. MINH was driving. MINH parked the car and THACH got out of the car. MINH and LUU got out of the car as well. There was another man that got out, a large man. Later Mr. Tam, an employee of Mr. Tung went out and came back and told the plaintiff that this was the son of MINH and LUU, named Vinh. A few minutes later another car came and parked and the

daughter of MINH and LUU got out.

230) The rear door of the Mekong Center was secured at this time with the padlock that had been put on the night before to keep the plaintiff and his wife out and another, large padlock, to which plaintiff and his wife had the only key, a key which the defendants MINH and LUU had transferred to the plaintiff and his wife on March 11, 1986, when MINH and LUU had urged the plaintiff and his wife to enter the store and begin their new business because the day was auspicious.

231) MINH and THACH took a tire iron and parts of a car jack and what looked from a distance like a hammer and broke this larger lock. All these defendants and those with them then went into the Mekong Center.

232) About this time plaintiff noticed that the red camaro was gone. It had gone while he had been watching to see what the

defendants MINH and LUU and THACH and the young man were doing, and while Mr. Tam had gone out to see who the young man was.

233) As plaintiff noticed this, almost immediately after MINH, THACH and LUU entered the Mekong Center building, three police cars arrived with two officers each. The officers went into the building and a little later a fourth police car arrived. Plaintiff and his wife have it on information and belief that slanderous and fraudulent representations concerning themselves and their activities were made to the police department in summoning these officers and that fraudulent representations were made as to the ownership of the food store business.

234) The defendants MINH, LUU and THACH defrauded, robbed and extorted plaintiff and his wife of the inventory they had purchased, the business papers of the food store and the business itself in this

manner as a culmination of a pattern of racketeering activity as that term is defined in 18 U.S.C. 1961.

235) From this pattern of racketeering activity the defendants MINH and LUU received income, or proceeds from such income, which they used or invested, directly or indirectly, in whole or in part, in the acquisition, operation, or establishment of an enterprise, namely the Mekong Center food store as built up and stocked by plaintiff and his wife, which engaged in, or the activities of which affect, interstate or foreign commerce in violation of 18 U.S.C. 1962 (a). The other defendants, except for SUNTECH SUNOCO, INC., aided and abetted in this pattern of racketeering activity and were therefore principals therein under the definition of section 2, title 18, U.S. Code.

236) Through the pattern of racketeering

activity alleged herein, the defendants MINH, LUU and THACH, acquired or maintained, directly or indirectly, an interest in or control of the enterprise of the Mekong Center food store business of plaintiff and his wife, and its inventories and documents and it is an enterprise engaged in, or the activities of which affect, interstate or foreign commerce and the same is a violation of 18 U.S.C. 1962 (b).

237) The defendants MINH, LUU, THACH, VO, ARIF, SOLAND and the COWBOYS became a fledgling organized criminal enterprise in which they all were employed or with which all were associated, and which was engaged in, or the activities of which affected, interstate or foreign commerce in that it conducted or participated, directly or indirectly, in patterns of racketeering activity described herein in violation of 18 U.S.C. 1962 (c).

238) The defendants MINH, LUU, THACH, VO, ARIF, SOLAND and the COWBOYS conspired to violate the provisions of 18 U.S.C. 1962 (a), (b), or (c) through the acts alleged herein and others.

239) Throughout their dealings with the defendants MINH and LUU, the plaintiff and his wife learned of more and more acts of fraud using the mails or the telephone that the defendants MINH and LUU were involved in and that illustrated a pattern of racketeering activity. Some of have been described above. Many involved the defendant THACH as well. There were three instances of insurance fraud, where they would mail in fraudulent claims and collect on them. Two were claims for worthless, spoiled food, after arranging for fraudulent "water damage", following a pattern of fraud that they had begun back in South Vietnam. There was an instance when they attempted to collect for damage

to their house on River Street. At first their claim was refused. Then the defendant THACH showed them how to make fake damage to their house look more authentic. Defendants MINH and LUU then hired THACH to repair the damage and filed a fraudulent claim which they collected on and much of it was taken by the defendant THACH as his share of the fraud. These frauds also interfered with commerce.

240) In their operation of the Mekong Center the defendants MINH and LUU perpetrated a number of frauds. They did not inform the owners of the building that they were actually subleasing in violation of the master lease and kept the difference between the rent thus fraudulently collected by the device of the Vietnamese language "management contracts," and the moneys paid on the lease to the primary landlord, and as part of that fraud they collect from the

purchasers of the "management contracts," the actual store owners, sales tax, but they do not pay the full amount of the "sales tax" that they collect to the tax authorities. They only pay part, on information and belief, which they mail in, but they keep the rest while fraudulently claiming that they have paid it all.

241) In allegations above the operation by the defendants MINH and LUU of securities fraud has been described in connection with land in Fairfax county. They are now, and have been for some time engaged in a securities fraud of a similar nature in connection with their "big business" in Philadelphia, Pennsylvania, which they call the Mekong Asian International Center. They advertise in a Vietnamese language newspaper that circulates in Maryland for investors in their Asian International Center in

Philadelphia with no intention of honoring their promises to these investors or paying them back. One of their standard patterns that they have implemented a number of times is to take money as an investment from ethnic Vietnamese for these real estate development projects and then when the people ask for the return of their investment they tell the people that they have control of the authorities and will turn the investors in for "welfare fraud" if the investors try to get their money back. Because they have discovered that many Vietnamese refugees living on welfare have a secret horde of cash or securities.

Allegations Establishing Basis for Damages

_242) The wife of the plaintiff is of ethnic Chinese Vietnamese extraction, or what is sometimes called "Overseas Chinese." Her family in Vietnam was

engaged in the retailing business in food and other goods. Growing up she worked in the retail business, including retailing of food. Then she worked for over four (4) years at the last of her time in Vietnam in the Post Exchange (PX) of the United States military, gaining further experience in retailing working with U.S. currency. She has extensive knowledge of retailing.

243) The Mekong Center food store, in the years that it was managed by the defendants MINH and LUU from 1976 through 1982, before they let it go downhill so badly, had gross annual revenues in a number of years of almost two million dollars ($2,000,000.) and even better in a few years. Traditionally, Vietnamese stores stay open seven days a week and the Mekong Center food store, throughout its history has stayed open seven days a week. The daily gross volume of the Mekong

Center food store in the years that the defendants MINH and LUU were running it profitably, exceeded five thousand dollars ($5,000.) per day.

244) The history of the business shows that the target, which plaintiff adopted, of reaching a daily gross volume of three thousand dollars ($3,000.) per day in a period of one year was realistic. In the period from March 11, 1986, until May 27, 1986, when the plaintiff and his wife actually were able to run the business, a period of a little over two and one half months, they increased the daily gross volume of the business from one hundred dollars a day ($100.) or less to nine hundred dollars ($900.) a day. This was despite the fact that their ability to order goods was hampered by the abyssmal credit history and rating of the defendants MINH and LUU that was associated with the center in the minds of

many of the ethnic wholesalers as set out in the attached affidavit and that the lack of the promised lease made it impossible for them to draw on the greater lines of credit available to them in San Francisco and elsewhere, centers of supply for oriental ethnic foods, through plaintiff's wife's extended family.

245) Had the plaintiff and his wife not been interfered with and defrauded by the defendants MINH, LUU, THACH and VO, they would have averaged fifteen hundred dollars ($1,500.) per day for the first year of their operation of the food store business and for the other remaining five and one half years on the master lease (assuming exercise of the last five year option by the primary tenants since there was no economic incentive to do otherwise) would have averaged a minimum of three thousand dollars per day gross volume. This would translate into a first year's

annual volume of five hundred and forty-seven thousand and five hundred dollars ($547,500.) and in the years thereafter a gross volume of one million and ninety-five thousand dollars ($1,095,000.) per year.

246) Industry figures for ethnic specialty food retailing and the experience of this market in particular as well as other similar ones, shows that the gross profit on such a business at these volumes is thirty percent (30%).

247) The plaintiff, by the endorsed certified check on May 2, 1986, paid the defendants MINH and LUU fifteen thousand dollars of the purchase price and he is entitled to the return of that as a damage.

248) The plaintiff and his wife invested in excess of forty-nine thousand dollars ($49,000.) in the inventory of the Mekong Center food store during the time when

they had been defrauded into believing that they owned the business and did own it based on their partial performance of the purchase contract and before the business was defrauded and extorted from them. The greater part of this inventory remained in the store and was unsold when the business was taken from the plaintiff and his wife in the culminating act of fraud and extortion on May 28, 1987. The retail value of this inventory was approximately sixty-four thousand dollars. ($64,000.) After the business was taken from them the defendants MINH and LUU, whose credit was nonexistent with the necessary wholesalers and suppliers as aforesaid, without buying any more goods or inventory, sold everything they could of the inventory accumulated by plaintiff and his wife for the store and then sold the business again, with virtually no inventory, for forty-five thousand dollars

($45,000.) sometime in July of 1986 to a third parties named Mr. Hiep and Mrs. Thao.

249) Defendants MINH and LUU used the proceeds of a pattern of racketeering activity to operate and maintain the enterprise of the food store which engages in or affects interstate or foreign commerce.

250) The plaintiff and his wife during the period in which they were defrauded into the ownership of the business in order that it might be extorted from them paid the defendants MINH and LUU approximately six thousand dollars ($6,000.) in rent including paydowns to wholesalers of back debt accumulated by the defendants MINH and LUU for which they were to receive credit against rent under their agreement with MINH and LUU on which they performed in substantial part. In addition plaintiff and his wife spent over

one thousand dollars ($1,000.) on services to improve the store, including rodent and pest elimination, installation of alarms and the like. Plaintiff expended over one thousand dollars ($1,000.) in time and materials fixing up the store, including repairing all broken shelving and extensive painting. Plaintiff and his wife gave defendants MINH and LUU about two thousand and one hundred dollars ($2,100.) in "sales tax" proceeds for Arlington County at a figure of four percent of gross sales. Plaintiffs have it on information and belief that the defendant MINH did not report the full figure of this sales tax to Arlington County officials or pay the full amount to them paid to him by plaintiff and plaintiff's wife.

251) The defendants MINH and LUU have a widespread reputation in their community for acts of fraud and deception, which

frequently involve use of the telephone and often the mails. The defendants THACH and VO have a widespread reputation for acts of fraud and deception as well, also frequently using the telephone and/or the mails and also a widespread reputation for acts of violence or threats of violence. The defendant LUU has a widespread reputation in the community for acts of violence as well. The defendants COWBOYS have a very widespread reputation for violence.

252) The fraud and extortion practiced upon the plaintiff and his wife in the matter of the Mekong Center interfered with commerce.

253) When the plaintiff and his wife took over the Mekong Center food store business on March 11, 1986, it had a reputation and standing in the community and within the trade that was very bad, for attempting to sell spoiled food, for

overcharging customers, for cheating customers and for other unbusinesslike practices. MINH and LUU had given it such a bad reputation that few other merchants wanted to deal with it and few customers patronized it. It had a large reservoir of ill will. The plaintiff and his wife, in two and one half months, built up the business of the Mekong Center food store business to a creditable standing among merchants and a good reputation in the community.

254) The defendants MINH and LUU used the proceeds of their fraud and extortion practice upon the plaintiff and his wife to acquire or operate in whole or in part other businesses and operations including their real estate promotion in Philadelphia, known as The Mekong Asian International Center, the operation of the business of subleasing through "management contracts" in the Mekong Center on Wilson

Boulevard in Arlington County, Virginia through helping supply the rental payments on the prime lease, the fraudulent business of skimming sales tax proceeds in the Mekong Center, the operation of their various frauds and cons out of their house on River Street in Arlington, also sometimes used as their home, their business of speculating in real estate and other businesses and operations.

255) Defendants MINH and LUU and their associates defendants THACH and VO, in connection with this matter of the Mekong Center food store, told numerous lies and falsehoods about the plaintiff and his wife that were deliberate attempts to damage the business and business reputation of the plaintiff and his wife, such as, after the final lockout and extortion, that plaintiff and his wife had not paid the rent on the food store and that is why the defendants MINH and LUU

and THACH had to evict them.

WHEREFORE the plaintiff prays in this Count IV for the acts complained of jointly and severally from the defendants MINH, LUU, THACH, VO, ARIF, SOLAND and, anonymously, the COWBOYS, the following damages:

I. Direct damages in excess of twelve million dollars ($12,000,000.) for the value of the business expropriated over the remaining life of the leasehold under the master lease.

II. Damages for damage to business generally, business reputation, in the nature of slander and destruction of good will, in excess of another twelve million dollars ($12,000,000.)

III. Damages in pain and suffering, mental and emotional anguish and distress, in excess of ten million dollars ($10,000,000.)

IV. Total damages under RICO, 18 U.S.C.

1964, before trebling and attorney's fees, in excess of thirty-four million dollars ($34,000,000.), and

V. Trebled under the provisions of 18 U.S.C. 1964, total damages in excess of one hundred and two million dollars ($102,000,000.) plus

VI. Attorney's fees for the cost of pursuing this count in excess of two hundred thousand dollars ($200,000.) for

VII. Total money damages in excess of one hundred and two million and two hundred thousand dollars ($102,200,000.), and

Equitable and declaratory relief as follows:

VIII. Preliminary injunction freezing all the proceeds of the development of the Mekong Asian International Center business of the defendants MINH and LUU in Philadelphia, Pennsylvania, and all of its assets pending the outcome of this

litigation.

IX. Preliminary injunction placing the operation of the subleasing of the said Mekong Center under the management of a court appointed trustee pending the outcome of this litigation or escrowing the proceeds therefrom and a permanent injunction ordering the business of that subleasing run under trust for the benefit of the satisfaction of the award rendered to the plaintiffs in this case for the remainder of the leasehold held there by defendants MINH and LUU and a declaration that the contract between plaintiff and his wife and MINH and LUU for the purchase of the food center business was a valid contract on which plaintiff and his wife substantially partially performed or, in the alternative, for the ownership of that master lease by the plaintiff in partial satisfaction of damages.

X. Temporary and permanent injunctions

ordering the defendants MINH, LUU, THACH, VO, ARIF, SOLAND and THE COWBOYS to refrain from representing that there was justification for their locking the plaintiff and his wife out of the Mekong Center and taking their business from them, or that plaintiff and his wife did not pay the rent to MINH and LUU during the time that they ran the food store business or in any way disparaging the ability of the plaintiff and his wife in the way that they managed the food store business upon pain of being held in contempt of this Court.

XI. Temporary and permanent injunctions ordering these defendants named above not to go within one mile of the aforesaid Mekong Center pending the outcome of this litigation and to not in any way harass, threaten, attempt to influence or in any other way attempt to influence the other shopkeepers who operated businesses in the

Mekong Center as to their testimony in this case and, in the event of a verdict and judgment in favor of the plaintiffs, thereafter, and to not go near or harass in any way the plaintiff or his wife or children or mother-in-law.

XII. And such other legal or equitable relief as to the court shall seem just and proper.